No. 18181

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WESTERN STATES REGIONAL COUNCIL NO. 3, INTERNATIONAL WOODWORKERS OF AMERICA, AFL–CIO AND INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 3–101, AFL–CIO, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

AUTHORITIES CITED

Cases—Continued

Cases—Continued

Statutes:

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*),[1] for enforcement of its order, issued May 25, 1962, against Western States Regional Council No. 3 International Woodworkers of America, AFL–CIO (hereinafter referred to as "the Regional Council") and International Woodworkers of America, Local 3–

[1] The pertinent provisions of the Act are set forth, *infra*, pp. 23–25.

101, AFL–CIO (hereinafter referred to as "the Union" or "Local 3–101"), respondents herein. The Board's Decision and Order (R. 29–36)[2] are reported at 137 NLRB No. 31. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred during a strike by Local 3–101 against the Eclipse Logging Company ("Eclipse") in Everett, Washington, within this judicial circuit. No jurisdictional issue is presented (R. 22).[3]

STATEMENT OF THE CASE

I. The Board's findings of fact

The Board found that respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of Bayside Logging Company ("Bayside") and Priest Logging, Inc. ("Priest") to

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[2] References designated "R" are to Volume I of the record as reproduced pursuant to Rule 10 of this Court. References designated "Tr" are to the reporter's transcript of testimony as reproduced in Volume II of the record. References designated "G.C.X." or "RX" are to exhibits of the General Counsel and respondent, respectively. Whenever in a series of references a semicolon appears, those preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

[3] Eclipse annually ships lumber outside the State of Washington valued in excess of $50,000 (R. 22; G.C.X. 1–g, para. IV, 1–i, para. IV, 1–k, para. I).

Priest Logging, Inc., and Bayside Log Dump Co., the two other employers involved in this case, are Washington corporations each annually receiving income in excess of $50,000 for performing services for business enterprises that ship products to points outside the State of Washington valued in excess of $50,000 (R. 22; G.C.X. 1–g, para. II, III, 1–i, para. II, III, 1–k, para. I).

refuse in the course of their employment to perform services, and by threatening, coercing and restraining Bayside and Priest, all with an object of forcing or requiring Bayside and Priest to cease doing business with Eclipse. The evidence upon which the Board based its findings is summarized below.

A. Background

Eclipse operates a sawmill in Everett, Washington, where it is engaged in the business of manufacturing logs into lumber (R. 22, 31; Tr. 245). Its employees are represented by Local 3–101 (Tr. 39, 291). Priest is a contract logger engaged in the felling and transportation of timber (R. 22; Tr. 197). In October 1958 Eclipse contracted with Priest to log and deliver timber from lands owned by Eclipse to the sawmill at Everett (R. 22; Tr. 198, 213–215). Under the contract Priest delivered the logs by truck to the sawmill where they were either dumped in the water or placed on land in piles, termed "cold decking" (R. 22; Tr. 204, 212–215). Eclipse's employees unloaded the trucks and handled the grouping of the logs whether they were dumped in the water by the sawmill or "cold decked" (R. 22–23; Tr. 216–219).

Pursuant to the collective bargaining agreement then existing between Eclipse and Local 3–101, the Union opened the contract for negotiations on or about March 16, 1961 (Tr. 16–21, 291–296, G.C.X. 2, 4). The opening notice specified four "industry issues" about which the Union wished to negotiate

(G.C.X. 2).[4] Local 3–101 authorized the Regional Council to represent it in "all negotiations" on the proposed industry terms "and also on all negotiations on any amendments or revisions requested by [Eclipse]" (G.C.X. 2). James Fadling, Regional Administrator, was sent by the Regional Council to participate in the negotiations which began after June 1 (Tr. 21–24, 94). Eclipse agreed to accept the industry terms, but only on condition that the Union agree to Eclipse's proposed modifications of the work assignments of "boom men" (Tr. 48–54, 138–143, G.C.X. 4, 5, 6).[5] On August 28 Fadling, after consulting the Local 3–101's standing committee, rejected Eclipse's proposal (Tr. 103–106, 306–308).

B. The strike at Eclipse

On August 29 Eclipse's employees went on strike and placed pickets at the entrance to the sawmill (R. 23; Tr. 216, 299, G.C.X. 1–g, para. IX, 1–i, para. IX). Eclipse could not accept any more deliveries from Priest due to the presence of the pickets and the unavailability of Eclipse employees to handle the logs (R 23; Tr. 205). The contract between Priest and Eclipse provided that Priest could not be reimbursed for cutting and hauling the logs until they were delivered at Eclipse's premises (R. 23; Tr. 203–205,

[4] The Regional Council and employer associations in the lumber industry had agreed to recommend to all the employers four "industry terms" to be adopted by each individual employer when negotiating collective bargaining agreements with the Union (Tr. 21, 40–41).

[5] "Boom men" are employees who raft and handle logs in a log "boom" or dump (Tr. 32).

213–215). In order to obtain reimbursement, Priest prevailed upon Eclipse "to find a place to dump these logs" (R. 23; Tr. 201–202, 215, 244–245). On September 12 Eclipse agreed to modify the terms of the contract and authorized Priest to deliver Eclipse logs at the Bayside Log Dump (R. 23; Tr. 201, 244–245). Bayside is a "public log dump" which accepts "logs from anybody up to our capacity" for the purpose of storing, sorting, and fashioning logs into rafts (R. 22; Tr. 150–151, G.C.X. 9). Eclipse then arranged with Bayside to unload and store the logs which Priest would begin to deliver on September 13 (R 23; Tr. 160–161, 168–169, 193–194). The expense of storing the logs at Bayside was to be borne by Eclipse (Tr. 245).

C. Picketing at Bayside

On September 13 Priest trucks began delivery of Eclipse logs to Bayside (R. 23; Tr. 160, 204). After a few truckloads had been unloaded, the Union's pickets appeared at the entrance to Bayside carrying picket signs which read, "ON STRIKE ECLIPSE LUMBER COMPANY UNFAIR TO 3–101, I.W.A., AFL–CIO" (R. 23; Tr. 156–158, 161–162, 188–189, 191). Bayside's employees refused to cross the picket line and stopped working (R. 23; Tr. 159, 171, 190). Bayside's log manager, Percey Ames, asked the pickets the reason for the picketing at Bayside (Tr. 157). George Terry, log dump operator at Eclipse, answered, "These are hot logs going in" (Tr. 157). He further identified the "hot logs" as "Eclipse logs, Priest logs" (Tr. 157). In addition to carrying a

670681—62——2

picket sign, Terry told the truck drivers who were delivering logs that the Union was "picketing because the Eclipse logs were being hauled into the dump and being dumped into the Bayside Dump" (Tr. 394–395). He asked the truck drivers not to go through the picket line (Tr. 395). Picket Captain Carl Sorenson testified that the picketing at Bayside "came about because the logs, hot logs, were being delivered to another source other than Eclipse. Well, when the strike committee was informed of it we took the action to place the picket line" (Tr. 369).

Other companies continued to deliver logs, unloading their own trucks, and Bayside soon became congested because there were no employees available to handle the dumped logs (R. 23; Tr. 184, 189–192). Due to the congestion of Bayside's storage facilities, Priest trucks stopped delivering Eclipse logs (R. 23; Tr. 204–205).

D. Bayside capitulates to the boycott

On September 19, 1961, John F. Walthew, the Union's attorney, told Bayside's attorney, James P. Hunter, that Local 3–101 had no labor dispute with Bayside "except insofar as the unloading of the trucks was concerned, that we wanted to stop the unloading of the trucks" (Tr. 66). Hunter asked, "What would happen if Bayside simply refused to take any of Eclipse logs?" (Tr. 61, 66, 229). Union Representative Fadling replied that if Bayside would agree not to handle any more Eclipse logs, the picket line would be removed in a half hour (Tr. 61, 230). Walthew and Hunter reached an agreement which

provided that on condition Bayside "will not accept any Eclipse logs hauled by Reid Priest," the picketing at Bayside would cease (Tr. 59, 61, G.C.X. 7). That afternoon Fadling telephoned Hunter and when told of the terms of the agreement, Fadling expressed his approval (Tr. 61, 86). Local 3–101's strike committee ratified the agreement after Fadling explained the method by which it was negotiated (Tr. 87–88, 379–380). At 6 p.m. the pickets were withdrawn and the next morning Bayside's employees returned to work (R. 23; Tr. 158, 182).

II. The Board's conclusions and order

The Board found that, by picketing, respondent Local 3–101 induced and encouraged the employees of Bayside and Priest to cease performing services for their respective employers with an object of forcing or requiring Priest and Bayside to cease doing business with Eclipse in violation of Section 8(b)(4)(i)(B) of the Act. The Board also found that Local 3–101 threatened, coerced and restrained Bayside and Priest with an object of forcing or requiring Priest and Bayside to cease doing business with Eclipse, thereby violating Section 8(b)(4)(ii)(B) of the Act (R. 31). The Board concluded that the Regional Council, by virtue of the role played by Administrator Fadling, was jointly liable with Local 3–101 for the conduct found violative of the Act (R. 31–33). The Board rejected the Trial Examiner's conclusion that Bayside was an ally of Eclipse and therefore not entitled to the protection of Section 8(b)(4); the Board concluding that Bayside was a neutral secondary em-

ployer who did not perform "struck work" in unloading and storing Eclipse logs (R. 30–31).[6]

ARGUMENT

I. Substantial evidence supports the Board's finding that respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of Bayside and Priest to cease performing services for their respective employers and by threatening, coercing, and restraining Bayside and Priest, all with an object of forcing or requiring Bayside and Priest to cease doing business with Eclipse

A. Introduction

Section 8(b)(4) of the Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959, provides, in relevant part, that it shall be an unfair labor practice for a union or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, * * * or perform any services; or (ii) to threaten, coerce, or restrain any person engaged in com-

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[6] In reversing the Trial Examiner, the Board did not overturn his credibility findings, but only the legal conclusions which he drew from the facts. Accordingly, the Trial Examiner's contrary conclusions are not entitled to any special weight. *N.L.R.B.* v. *Eclipse Lumber Co.*, 199 F. 2d 684, 686 (C.A. 9); *N.L.R.B.* v. *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135*, 212 F. 2d 216, 217 (C.A. 7); *J. I. Case Co.* v. *N.L.R.B.*, 253 F. 2d 149, 155–156 (C.A. 7); *International Woodworkers of America, AFL–CIO* v. *N.L.R.B.*, 262 F. 2d 233, 234 (C.A.D.C.); *I.U.E.* v. *N.L.R.B.*, 273 F 2d 243, 247 (C.A. 3).

> merce or in an industry affecting commerce, where in either case an object thereof is:
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> * * * * *
>
> (B) forcing or requiring any person to cease * * * handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *.

This section renders unlawful, as did the corresponding provisions of Section 8(b)(4)(A) in the 1947 Act, the implication of neutral employers in disputes not their own where an object is to force the cessation of business relations between the neutral employer and any other person. "The impact of the section [is] directed toward what is known as the secondary boycott whose 'sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it.' *International Brotherhood of Electrical Workers* v. *Labor Board,* 181 F. 2d 34, 37." *Local 761, International Union of Electrical Workers* v. *N.L.R.B.,* 366 U.S. 667, 672. By enacting the 1959 amendments, Congress substantially broadened the scope of the prohibition against conduct aimed at achieving these objectives. Thus, in subparagraph (i), there is now contained a specific prohibition against inducement of an individual employee to stop work. *N.L.R.B.* v. *Highway Truckdrivers & Helpers, Local No. 107,* 300 F. 2d 317, 319, 322 (C.A. 3); *Local 294, Teamsters* v. *N.L.R.B.,* 298 F. 2d 105, 107–108 (C.A. 2); *N.L.R.B.* v. *International Hod Carriers, Local 1140,* 285 F. 2d 397, 402 (C.A. 8), cert. denied 366 U.S. 903. This is

in contrast to the 1947 provision, which only prohibited inducement of "employees" to engage in a "concerted" refusal to perform work. See *Local 1976, Carpenters Union* v. *N.L.R.B.*, 357 U.S. 93, 98; *Joliet Contractors Ass'n.* v. *N.L.R.B.*, 202 F. 2d 606, 612 (C.A. 7), cert. denied 346 U.S. 824. In addition, Congress introduced a new provision, contained in subparagraph (ii), making it unlawful for a union to "threaten, coerce, or restrain any person" for the purpose of achieving any of the proscribed secondary objectives. This subparagraph forecloses threats made to neutral employers of labor trouble or other consequences, and prohibits the carrying out of such threats by means of a strike or other economic retaliation. *Great Western Broadcasting Corp.* v. *N.L.R.B.*, F. 2d (C.A. 9), 51 LRRM 2480; *N.L.R.B.* v. *Highway Truckdrivers & Helpers, Local No. 107, supra,* at 320–321; *N.L.R.B.* v. *Plumbers Union of Nassau County,* 299 F. 2d 497, 500 (C.A. 2); *N.L.R.B.* v. *International Hod Carriers, Local 1140, supra.*

There can be no question, on the facts set forth, *supra,* pp. 5–7, but that by means of solicitation and picketing, the Union induced and encouraged the employees of Bayside to cease performing services in the course of their employment,[7] and that by such conduct, and the threats thereof, also threatened, re-

[7] See, e.g., *International Brotherhood of Electrical Workers* v. *N.L.R.B.*, 341 U.S. 694, 700–704; *N.L.R.B.* v. *Laundry, Linen Supply*, 262 F. 2d 617, 620 (C.A. 9); *Superior Derrick Corp.* v. *N.L.R.B.*, 273 F. 2d 891, 896 (C.A. 5), cert. denied 364 U.S. 816; *N.L.R.B* v. *Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), cert. denied 351 U.S. 962.

strained and coerced Bayside and Priest[8]—all with an object of forcing or requiring those employers to cease doing business with Eclipse.[9] The Union's sole defense to the finding that its above-described conduct violated Section 8(b)(4)(i) and (ii)(B) of the Act is that Bayside, by accepting the Eclipse logs from Priest for storage, allied itself with Eclipse in the primary dispute and thereby made itself vulnerable to picketing by the Union. The Board rejected this contention however, and concluded that on the facts of this case, the Union's picketing of Bayside was unlawful. We show below that the Board's conclusion is amply supported by the record, and is valid.

B. The Board properly concluded that Bayside was not an ally of Eclipse and that it is protected by the secondary boycott provisions of the Act

As shown in the Statement, *supra,* p. 4, the contract between Priest and Eclipse provided that Priest could not be paid for cutting and hauling the Eclipse logs until those logs were delivered to the premises of Eclipse. When the Eclipse employees struck on August 29, Priest was unable to effectuate delivery of the logs because no Eclipse employees were avail-

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[8] See, e.g., *N.L.R.B.* v. *Highway Truckdrivers & Helpers, Local No. 107*, 300 F. 2d 317 (C.A. 3); *N.L.R.B.* v. *Plumbers Union of Nassau County*, 299 F. 2d 497, 500 (C.A. 2); *N.L.R.B.* v. *International Hod Carriers, Local 1140*, 285 F. 2d 397 (C.A. 8), cert. denied 366 U.S. 903.

[9] In its answer to the complain, Local 3–101 admitted that it engaged in the picketing "for the purpose of informing Bayside employees that the work of unloading the Priest trucks was 'struck work' from Eclipse Mill" (G.C.X. 1–i, para. XI); and that "the purpose of the pickets stationed adjacent to Bayside was to require Bayside and Priest to cease unloading Eclipse logs at Bayside" (G.C.X. 1–i, para. XII).

able to handle them. The direct consequence of this tie-up, therefore, was that Priest would not be paid for its services. Then, as the Trial Examiner found, Priest, "actuated by these financial considerations, * * * prevailed upon Eclipse to arrange with Bayside Log Dump for the storing of Eclipse logs that would be delivered to it by Priest, and Priest would then receive reimbursement. Eclipse agreed to make such arrangements with Bayside and did so. Carrying out this arrangement on September 13, 1961, Priest trucks delivered Eclipse logs to Bayside" (R. 23; Tr. 160–161, 168–169, 201–202, 215, 244–245).

Respondents contend that Bayside, by its knowing acceptance and unloading of Eclipse logs delivered by Priest, performed "struck work"—i.e., services for Eclipse which, but for the strike, normally would have been performed by Eclipse employees. Thus, the argument proceeds, Bayside became an ally of Eclipse and a party to the dispute, unprotected by Section 8(b)(4)(i) and (ii)(B) of the Act. See *N.L.R.B.* v. *Amalgamated Lithographers of America, et al.,* 309 F. 2d 31, 36–38 (C.A. 9); *N.L.R.B.* v. *Business Machine and Office Appliance Mechanics Board,* 228 F. 2d 553 (C.A. 2) cert. denied 351 U.S. 962; *Douds* v. *Metropolitan Federation of Architects,* 75 F. Supp. 672 (S.D. N.Y.).

This argument, however, misconceives the nature of the "struck work" doctrine, which is an exception to the normal principles by which the Act's protection against secondary boycotts is accorded to neutral employers. It is well settled that an employer is not deprived of his neutral status and the accompanying safeguards of Section 8(b)(4) simply because he

performs services for the primary employer. "The business relationship between independent contractors is too well established in the law to be overriden without clear language [in the Act] doing so." *N.L.R.B.* v. *Denver Building and Construction Trades Council,* 341 U.S. 675, 690.[10] As the cases cited in this and the preceding paragraph recognize, the difference between a secondary employer becoming an unprotected ally of the primary by doing struck work, and one remaining a protected neutral employer even though doing business with the primary, lies in the fact that in the former situation, "the economic effect upon [the striking] employees [is] precisely that which would flow from [the primary employer] hiring strikebreakers to work on its own premises." *Douds* v. *Metropolitan Federation of Architects, supra,* at 677. The allied employer is "hired [by the primary] to do its everyday business in an effort to preserve its good will and perhaps its profits." *United Steelworkers* v. *N.L.R.B.,* 289 F. 2d 591, 595 (C.A. 2). Under those circumstances, the secondary employees are, in effect, primary employees, and the striking union has as much right to picket the secondary employer as it has to picket the primary premises. "If

[10] Accord: *Retail Fruit & Vegetable Clerks* v. *N.L.R.B.*, 249 F. 2d 591, 594–595 (C.A. 9); *N.L.R.B.* v. *Local 810, Teamsters*, 299 F. 2d 636, 637 (C.A. 2); *Drivers & Chauffeurs Local Union 816* v. *N.L.R.B.*, 292 F. 2d 329, 331 (C.A. 2), cert. denied, 368 U.S. 953; *N.L.R.B.* v. *Dallas General Drivers, etc., Local 745*, 264 F. 2d 642, 647 (C.A. 5), cert. denied, 361 U.S. 814; *N.L.R.B.* v. *Chauffeurs, Teamsters, Warehousemen & Helpers Local Union No. 135*, 212 F. 2d 216, 217–218 (C.A. 7); *McLeod* v. *U.A.W., Local 365*, 200 F. Supp. 778, 780–781 (E.D. N.Y.), affd. 299 F. 2d 654 (C.A. 2).

the latter is not amenable to judicial restraint neither is the former." *Douds* v. *Metropolitan Federation of Architects, supra.* On the other hand, the fact that a secondary employer does business with the strike-bound primary employer—business other than the performance of services which *supplants* the work that the striking employees would have performed—does not render the secondary an ally of the primary even though it would necessarily tend to diminish the effectiveness of the strike. See, e.g., *N.L.R.B.* v. *Local 810, Teamsters,* 299 F. 2d 636 (C.A. 2), where the court held that a secondary employer who performed trucking and warehousing services for the primary did not become an ally even when, during the course of the strike, he provided cars and drivers to the primary for the transportation of nonstriking employees across the picket line.

In the case at bar, Bayside's acceptance of Eclipse logs for storage did not aid Eclipse in "breaking" the strike, for Bayside did not carry on Eclipse's business in its stead. Cf. *N.L.R.B.* v. *Business Machine & Office Appliance Mechanics Board,* 228 F. 2d 553, 558 (C.A. 2); *Douds* v. *Metropolitan Federation of Architects, supra,* at 676–677. Eclipse operates a sawmill while Bayside is a public log dump. The work which Bayside performed was not "struck work" for Bayside did not mill the logs in circumvention of the strike but merely performed the function of a warehouse. Eclipse arranged for the storage of its logs with Bayside purely as a convenience to Priest who could not be reimbursed for his logging services until the logs were delivered. While Bayside did perform

some service for Eclipse, that did not make the former an ally of the latter. Cf. *N.L.R.B.* v. *Local 810, Teamsters, supra.* The economic effect of Bayside's activity upon the strikers does not parallel Eclipse's hiring of strikebreakers to perform their work.

Moreover, the unloading of Eclipse logs by Bayside did not supplant the work of the striking employees but merely duplicated it. Eclipse's employees normally unloaded Priest's trucks; however, the logs stored at Bayside were destined for later delivery to Eclipse at the cessation of the strike, and the normal unloading work of the striking employees thus remained to be performed. Therefore, Bayside did not perform "work, which but for the strike * * *, would have been done by" Eclipse, for the ally test presupposes that the work done by the secondary supplants, rather than merely duplicates, the work of the primary. *Douds* v. *Metropolitan Federation of Architects, supra,* at 677.[11]

[11] Cf. *Mcleod* v. *U.A.W., Local 365*, 200 F. Supp. 778 (E.D. N.Y.), aff'd. 299 F. 2d 654 (C.A. 2). There, the primary's employees normally loaded goods produced by the primary onto trucks for shipment. Before the strike began, certain goods which had been loaded onto trucks by the employees were sent to a warehouse for storage pending completion of financial arrangements with the buyer. During the strike, when the primary sought to remove the goods from the warehouse for shipment by means of an independent trucker, the union picketed the warehouse and induced the warehouse employees not to load the goods on the trucks. The union contended that the loading of the goods by the warehouse employees constitutes struck work, thereby making the warehouse an ally of the primary. The court rejected the contention, noting that the striking employees performed the loading only when the goods leave the primary's plant. The striking employees performed that

Accordingly, the Board properly found that Bayside is not an ally of Eclipse and thus is protected by Section 8(b)(4)(i) and (ii)(B) of the Act.

C. The Board properly held the Regional Council jointly liable with Local 3–101 for the violations of Section 8(b)(4)

When Local 3–101 advised Eclipse of its desire to open their collective bargaining agreement for revision and amendment of the contract relating to certain "industry terms," the Union's notice stated (G.C. X. 2):

> * * * This Local Union * * * notifies you that the Western States Regional Council No. 3, International Woodworkers of America, has sole authority to represent it in all negotiation on the proposed amendments and revisions stated above *and also on all negotiations on any amendments or revisions requested by you or your representatives. Any departure from this notice must be in writing to you over the signature of the Western States Regional Council No. 3.*
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> * * * * *
>
> Any additional revision or amendment which this Local Union desires shall not be a subject

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function in connection with the shipment of these goods to the warehouse. Having already loaded them onto trucks once, "there was no further work to be done by respondent as to the machines; consequently, there was no shunting by [the primary] to neutrals of work generally done by respondent" (*id.*, at 781). The facts of the instant case present the converse situation: Bayside's unloading of the trucks would not supplant Eclipse's employees' work task of unloading when the logs stored at Bayside are shipped to Eclipse at the cessation of the strike. Hence, the unloading at Bayside was not "struck work."

> of negotiations by the above-mentioned council. The Local Union retains the right and privilege of meeting with you or your representatives on these matters. [Emphasis added.]

Pursuant to this authorization, the Regional Council sent Fadling, its Area Administrator, to serve as its spokesman in the negotiations with Eclipse. On August 28, as a result of these negotiations, Eclipse agreed to accept the industry terms, but only on condition that the Union agree to certain contract modifications relating to "local issues" (G.C. X. 6). Fadling rejected the employer's proposals on the ground that Eclipse had failed to give timely notice of its intention to raise these issues as required by the contract (Tr. 41, 48, 417–418). Neither party would modify its position, and the Eclipse employees went on strike the next day. When Bayside began receiving Eclipse logs on September 13, the Union began picketing Bayside and continued to do so until Bayside agreed not to handle any more Eclipse logs—an agreement which Fadling helped to negotiate.

No one disputes that Fadling's conduct during the picketing of Bayside is attributable to Local 3–101. At issue here is the liability of the Regional Council for his participation in extracting the agreement from Bayside to cease doing business with Eclipse (*supra*, pp. 6–7). The Regional Council contends that Fadling was only authorized to represent it in the negotiation of the industry terms, and that when Eclipse agreed to those terms on August 28, the role of Fadling as

agent of the Regional Council came to an end. Thereafter, respondents claim, Fadling was acting only on behalf of Local 3–101 pursuant to a specific authorization of the Local, and none of his subsequent conduct could be attributed to the Regional Council.

The Board rejected this argument as lacking in merit, and this rejection is entitled to affirmance by the Court. The Regional Council's involvement in the negotiations between Local 3–101 and Eclipse was not limited to settlement of the industry terms. The Local's notice to Eclipse, *supra*, specifically provided that the Regional Council was to represent the Local "on all negotiations on any amendments or revisions requested by [Eclipse] or [its] representatives." The disagreement between the parties on August 28 arose over "amendments or revisions requested by [Eclipse]." By the very terms of this authorization, therefore, it is apparent that Fadling—*as the Regional Council's spokesman at these negotiations*—was acting within the scope of the authority given the Regional Council by the Local to reject these demands and to participate in the resulting strike activities deemed necessary to compel Eclipse to forsake the concessions it was seeking in return for agreement on the industry terms. If the Regional Council had limited Fadling's authority in any way, i.e., if he had been instructed not to act on its behalf in dealing with local issues raised by the employer, the Regional Council was duty-bound to so notify Eclipse of this restriction, for as the Local's authorization stated:

> Any departure from this notice must be in writing to [Eclipse] over the signature of the Western States Regional Council No. 3.

Such notice in writing was never given; and in the absence of such notification, the Regional Council is clearly liable for the conduct of its spokesman in dealing with the "amendments or revisions requested by [Eclipse]." See, *Retail Fruit & Vegetable Clerks Union* v. *N.L.R.B.,* 249 F. 2d 591, 597–598 (C.A. 9); *N.L.R.B.* v. *Acme Mattress Co., Inc.,* 192 F. 2d 524, 527 (C.A. 7); *United Mine Workers* v. *Patton,* 211 F. 2d 742, 746 (C.A. 4); *Lewis* v. *Benedict Coal Corp.,* 259 F. 2d 346, 351–352 (C.A. 6).

Respondents may contend, however, that the Local authorized the Regional Council to represent it only as to the industry terms, and that it was beyond the scope of the Regional Council's authority to become involved in the dispute over the local issues raised by the employer. The short answer to this argument is that the Local's written authorization (G.C.X. 2), copies of which were sent to both Eclipse and the Regional Council, is by its own terms not so limited. Moreover, even if the authorization could be construed in the restricted fashion suggested, that would offer no aid to respondents. For the record shows that Eclipse had not accepted the industry terms when the strike began (Tr. 48, G.C.X. 6). Indeed, the purpose of the strike was to compel Eclipse to accept the industry terms without the Local having to accept the other contract modifications sought by Eclipse in return. Absent any notice to the contrary, no third

party could reasonably believe that Fadling's role as agent of the Regional Council was at an end when, on August 28, Eclipse said, in effect, that if it should ever sign a revised contract, the industry terms sought by the Regional Council would be included. One would expect that the Regional Council, as the Local's bargaining representative, would necessarily be concerned with whether the contract which included those terms would ever become effective. Under these circumstances, if Fadling did not have the actual authority to act on behalf of the Regional Council in the events subsequent to August 28, he certainly had the apparent authority; and as the Board found: "[The Regional Council] never made clear to any of the parties in interest when the authority with which it had cloaked Fadling to act as its agent terminated. Nor did it ever disavow any of Fadling's conduct. Furthermore, Fadling himself never undertook to advise the interested parties that he was not acting for his employing principal, the Respondent Regional Council, at any of the times material here" (R. 33).

Accordingly, Fadling's admitted participation in the secondary boycott was within the apparent scope of his authority as representative of the Regional Council, and the Board could properly hold the Regional Council jointly liable with Local 3–101 for the proscribed secondary activity. *N.L.R.B.* v. *Cement Masons Local 555,* 225 F. 2d 168, 173 (C.A. 9); *N.L.R.B.* v. *Acme Mattress Co., Inc., supra.*

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.[12]

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JANUARY 1963.

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[12] In their answer to the Board's enforcement petition, respondents asserted that no order should issue because the picketing of Bayside had already ceased, the primary dispute with Eclipse had been settled, and Eclipse has since ceased doing business in Everett, Washington, because its property there was destroyed by fire. It is well settled, however, that none of these circumstances provide a basis for denial of the Board's petition. "[T]ermination of the picketing, the walkout and the particular job itself do not render the Board's order moot." *N.L.R.B.* v. *Plumbers Union of Nassau County*, 299 F. 2d 497, 501 (C.A. 2). Accord: *Local 1976, Carpenters Union* v. *N.L.R.B.*, 357 U.S. 93, 97, n. 2; *N.L.R.B.* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217, 225, n. 7; *N.L.R.B.* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261, 271; *N.L.R.B.* v. *Local 926, I.O.U.E.*, 267 F. 2d 418, 420 (C.A. 5); *N.L.R.B.* v. *F. H. McGraw & Co.*, 206 F. 2d 635, 641 (C.A. 6); *N.L.R.B.* v. *United Brotherhood of Carpenters and Joiners*, 184 F. 2d 60, 63 (C.A. 10), cert. denied, 341 U.S. 947; *N.L.R.B.* v. *Local 74, Carpenters Union*, 181 F. 2d 126, 132–133 (C.A. 6), aff'd 341 U.S. 707; *N.L.R.B.* v. *General Motors*, 179 F. 2d 221, 222 (C.A. 2)

CERTIFICATE

The undersigned certifies that he has examined the provisions of rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

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National Labor Relations Board.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

* * * * *

SEC. 2. When used in this Act—

* * * * *

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * * *

SEC. 8(b). It shall be unfair labor practice for a labor organization or its agents—

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any

other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * * *

SEC. 10. (e) The Board shall have power to petition any court of appeals of the United States, * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objec-

tion shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made apart of the record * * * Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the * * * Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

APPENDIX B

INDEX TO REPORTER'S TRANSCRIPT

Exhibit No.	General Counsel's Exhibits—		
	Identified	Offered	Received in Evidence
1-a to 1-l	5	5	5
2	18	18	19
3	26	29	29
4	49	49	50
5	52	52	52
6	54	54	54
7	59	63	63
8	135	135	136
9	153	153	153
10	340	339	340

WITNESSES FOR THE GENERAL COUNSEL

WITNESSES FOR THE RESPONDENTS

U.S. GOVERNMENT PRINTING OFFICE: 1962